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WILMER CUTLER PICKERING HALE AND DORR LLP			VAN DOREN, BETH	
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3623

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/888,004

Applicant(s)

PITTELLI, PATRICK

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17, and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17, and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040512</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final rejection in response to communications received 05/12/2004. Claims 1, 3, 4, 8-10, 17, 22, 24, 26, and 27 have been amended. Claim 6 has been canceled. Claims 1-5, 7-17, and 20-27 are now pending in this application.

Response to Amendment

2. Applicant's amendment to claim 27 is sufficient to overcome the claim objections set forth in the previous office action.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 4, 7, 9, 10, 12, 13, 17, and 25-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Fujino et al. (U.S. 2002/0077963).

5. As per claim 1, Fujino et al. teaches a computer-implemented method for determining the market demand for an artist comprising:

receiving user input to determine which artists to select from a pool of artists (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein an artist uploads his/her art and a supporter votes on said artists to determine which artists to select);

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determining the market demand for each said selected artist based on users contributing money to a separate fund for each said artist (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein the user's vote is accompanied by a money contribution to the artist's fund);

identifying artists that attain a predefined money level of user contributions, such that said fund, minus a commission, is provided for the benefit of each artist that attains the predefined level of user contributions (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067, wherein artists that attain a predefined level of user contributions are awarded the support fund, minus a commission);

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least 0063-0067 and 0071, wherein the user can sell his/her votes in a person); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least 0063-0067 and 0071, wherein a user can trade votes from one artist to another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least 0033, 0039, 0063-0067 and 0071, wherein the stock is sold and the money is now in an undistributed non-artist account (for example, credited to the user's credit card or profile)).

6. As per claim 2, Fujino et al. teaches a method wherein said user input is in the form of user votes (See at least 0006, 0007, 0010, 0013, 0035, and 0038-0040, wherein the users vote).

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7. As per claim 4, Fujino et al. teaches a method further comprising making available to each artist attaining a predefined money level of user contribution, funds from the users' contribution to the artist to produce and commercialize the artist (See at least the abstract, paragraphs 0006, 0007, 0010-0015, 0031, f0040, 0063-0067, and 0074, wherein the fund is made available to the artist attaining a predefined level of user contribution).
8. As per claim 7, Chacker discloses a method further comprising maintaining information on said users, and using said information to market said artist (See at least the abstract, and paragraphs 0006-0015 and 0033, which discusses maintaining user information).
9. As per claim 9, the elements of claim 9 are substantially similar to the elements of claim 1 and are therefore rejected using the same art and rationale as applied in the rejection of claim 1.
10. As per claim 10, Fujino et al. teaches a method for an artist to obtain financial support comprising:
 - receiving and storing on a file server a sample of the artist work (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein an artist uploads his/her art and it is maintained on a file server);
 - evaluating the artist's work from a pool of artists (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein the artist's work is evaluated);
 - selecting an artist based on said artist's work to be eligible for financial contributions from users, wherein the financial contributions are money (See at least the

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abstract, paragraphs 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein the artist is eligible for contributions);

establishing a fund of any such contributions for an artist who meets a predefined criteria (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein a fund is established of monetary contributions to the artist); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least 0063-0067 and 0071, wherein the user can sell his/her votes in a person); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least 0063-0067 and 0071, wherein a user can trade votes from one artist to another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least 0033, 0039, 0063-0067 and 0071, wherein the stock is sold and the money is now in an undistributed non-artist account (for example, credited to the user's credit card or profile)).

11. As per claim 12, Fujino et al. teaches a method further comprising releasing the fund to the artist based on the artist meeting predefined criteria (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067, wherein an artist that meets predefined criteria receives the fund).

12. As per claim 13, Fujino et al. discloses a method further comprising returning the selected artist to the pool of artists if artist fails to meet predefined criteria (See at least

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the abstract, paragraphs 0006, 0007, 0010-0015, 0035, 0038-0040, and 0071 wherein a user trades his/her votes).

13. As per claim 17, the elements of claim 17 are substantially similar to the elements of claim 1 and are therefore rejected using the same art and rationale as applied in the rejection of claim 1. Furthermore, Fujino et al. discloses a computer-implemented system including a file server and a processor programmed for implementing instructions (See at least figures 1 and 2 and paragraphs 0030-0035).

14. As per claim 24, the elements of claim 24 are substantially similar to the elements of claim 1 and are therefore rejected using the same art and rationale as applied in the rejection of claim 1.

15. As per claim 25, Fujino et al. teaches an article wherein users select and contribute to an artist through a network connection (See at least figures 1 and 2 and paragraphs 0030-0034 and 0038, wherein the users are connected to the system and provide input via a network).

16. As per claim 26, Fujino et al. discloses a computer-implemented apparatus for determining market demand for an artist comprising:

means for receiving and storing works of artists (See at least the abstract, figures 1 and 2, and paragraphs 0032-0035, wherein works are received and stored);

means for enabling users to access the stored works (See at least the abstract, paragraphs 0006, 0007, 0010-0017, 0033, and 0036-0038, wherein users would access the stored works);

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means for receiving user input to elevate artist from the general artist pool (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein user's input votes to raise the artist from the general pool);

means for making elevated artists eligible for financial contributions from users, wherein the financial contributions are money (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067, wherein the artist becomes eligible to receive the financial contributions from the users when the artist meets a predefined level);

means for making financial contributions from users, wherein the financial contributions are money, available to artists that meet predefined criteria (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067);

means for providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least 0063-0067 and 0071, wherein the user can sell his/her votes in a person); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least 0063-0067 and 0071, wherein a user can trade votes from one artist to another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least 0033, 0039, 0063-0067 and 0071, wherein the stock is sold and the money is now in an undistributed non-artist account (for example, credited to the user's credit card or profile)).

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17. As per claim 27, the elements of claim 27 are substantially similar to the elements of claim 1 and are therefore rejected using the same art and rationale as applied in the rejection of claim 1.

18. Claims 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Chacker (U.S. 6,578,008).

19. As per claim 22, Chacker discloses a system for presenting artists to determine market demand for artists comprising a computer programmed having instructions for implementing the method of:

receiving and storing work of artists on a file server (See at least column 5, lines 50-60, column 6, lines 55-67, column 6, lines 1-10 and 60-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 15-35 and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

dividing said work into categories (See at least figure 6 and column 12, lines 40-45, wherein a genre is defined for the works);

selecting said work from said categories (See at least figure 6 and column 12, lines 40-45, wherein a work is selected from the categories using the links);

elevating selected works into positions that are eligible to receive direct financial support from users, wherein the financial support is money (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

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promoting the artists who receive a predefined amount of direct financial contributions (See at least column 9, lines 10-50, wherein the artist are promoted); and providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

20. As per claim 23, Chacker discloses instructions for limiting the number of positions available to receive financial contributions from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist positions in the system are limited by a pre-selection process which narrows the number of artists that move into the voting portion of the system).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 3, 5, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujino et al. (U.S. 2002/0077963).

23. As per claim 3, Fujino et al. discloses a method wherein users contributing to an artist who attains a predefined money level of user contributions are given a reward (See at least the abstract, paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067, wherein the user receives a dividend for the user's support). However, Fujino et al. does not expressly disclose giving these users a recognition certificate regarding said artist.

Fujino et al. discusses networks that promote unsigned artists through user interaction. Fujino et al. further discloses giving a user an incentive to partake in the system. See at least paragraph 0005 and 0007. Providing incentives to participate, such as prizes and gimmicks, is well known in the marketing and sales industry. Therefore, it would to one of ordinary skill in the art at the time of the invention to provide the users of Fujino et al. a recognition certificate regarding an artist in order to increase user participation by providing incentives to participate, as is taught in the prior art and known in the art.

24. As per claim 5, Fujino et al. teaches a method wherein the artist is a musician and the funds are used to support the artist in artistic activities (See at least 0006-0007, 0031,

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and 0073-0074). However, Fujino et al. does not expressly disclose that the musician uses the funds to produce a record.

Fujino et al. discloses providing an unsigned musician with a fund to aid in the pursuit and growth of that musician and his/her activities. Producing a record is a well-known activity of musicians that requires funding. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include that the musician uses the funds to perform the activity of producing a record in order to more efficiently support a musician of the system by providing funding for a well known activity performed by beginning musicians.

25. As per claim 8, Fujino et al. discloses limiting the number of user permitted to contribute to said artist (See at least paragraphs 0040-0043, which discusses voting 1, voting 2, etc.). However, Fujino et al. does not expressly disclose limiting the users to a predefined number.

Fujino et al. discusses networks that promote unsigned artists through user interaction and determining each artist's vote tallies and funding by users. It is well known in voting to use controls when taking measurements, such as using a defined sample group or a defined time period in order to have a standard for efficient comparison. Furthermore, it is well known that voting needs to be limited by some condition in order for a contest to end and the results to be tabulated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to limit the number of users interacting with the system of Fujino et al. when determining the vote tallies for artists in order to more accurately identify artists eligible for funds by establishing standards and measurable quantities to be used in making a judgment.

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26. As per claim 11, the elements of claim 11 are substantially similar to the elements of claim 5 and are therefore rejected using the same art and rationale as applied in the rejection of claim 5.

27. Claims 14-16 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujino et al. (U.S. 2002/0077963) and Chacker (U.S. 6,578,008).

28. As per claims 14-16, Fujino et al. discloses a method wherein selecting an artist to be eligible for financial support is based on the artist having activities that meet a predetermined condition such as a number of votes and proper registration (See at least the abstract, paragraphs 0006, 0007, 0010-0015, 0035, and 0038-0040, wherein the artist is eligible for contributions). However, Fujino et al. does not expressly disclose that eligibility is determined based on the largest number of user votes, by a panel of individuals, or determined in part by a panel of individuals and in part by user votes.

Chacker discloses a method wherein selecting an artist to be eligible for financial support is based on the artist who attains the largest number of user votes, determined by a panel of individuals, and determined in part by a panel of individuals and in part by user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected based on attaining the largest number of votes, for financial support based upon the panel of individuals initially reviewing the artist, or both).

Both Fujino et al. and Chacker discuss computer-implemented systems that that promote unsigned artists through user interaction, voting, and funds. Fujino et al. further discloses that the entry of the artist must satisfy conditions to be eligible for the system

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and certain activities must occur for the artist to be eligible for funds. Fujino et al. further discloses displaying the artists to a user in a ranked order based on current votes (see paragraph 0038). It would have been obvious to one of ordinary skill in the art at the time of the invention to base eligibility on the largest number of user votes, by a panel of individuals, or determined in part by a panel of individuals and in part by user votes in order to increase the efficiency of the system in allowing users to provide support to bands by presenting only those bands eligible to be voted on to the users.

29. As per claim 20, the elements of claim 20 are substantially similar to the elements of claim 15 and are therefore rejected using the same art and rationale as applied in the rejection of claim 15.

30. As per claim 21, Fujino et al. teaches a method wherein the artists that can be selected to receive financial support from the pool of artists is predefined (See at least paragraphs 0002, 0006, 0007, 0010-0015, 0040, 0063-0067, wherein the artists selected are done so by predefined activities). However, Fujino et al. does not expressly disclose that the artists that can be selected are predefined by a number of artists.

Chacker discloses the number of artists that can be selected to receive financial support from the pool of artists is predefined (See column 8, lines 60-67, wherein the number of artists is at least 50).

Both Fujino et al. and Chacker discuss computer-implemented systems that that promote unsigned artists through user interaction, voting, and funds. Fujino et al. further discloses that certain activities must occur for the artist to be eligible for funds and that eligibility is determined by tallying after a period of voting. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to only provide

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funds to a predetermined number of artists in order to more efficiently support those artists that provide the largest amount of support from users of the system. By focusing on a smaller pool of popular artists, each of these artists would receive more support to succeed.

Response to Arguments

31. Applicant's arguments with respect to claims 1-5, 7-17, 20-21, and 24-27 have been considered but are moot in view of the new grounds of rejection, necessitated by amendment.

32. Applicant's arguments with respect to Chacker (U.S. 6,578,008) and claims 22 and 23 have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (1) Chacker does not teach or suggest real money or user contributing money to a money-fund to benefit an artist and (2) Chacker does not teach or suggest that when an artist attains a predefined money level of user contributions the artist receives the fund itself minus a commission.

In response to arguments (1) and (2) of the Applicant, Examiner notes that the features upon which applicant relies (i.e., real money, money funds, an artist receiving a fund minus a commission, etc.) are not recited in rejected claims 22-23. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Chacker does teach and suggest allowing selected works to receive financial support from users, wherein the financial support is money received from the users in a financial investment game. Artists that receive a predefined amount of money contributions from users are promoted by the system. See at least column 5, lines 50-60,

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column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Callahan ("Streaming' to a Record deal") discloses finding new bands and pairing the bands with producers and users.

LoudEnergy.com (www.loudenergy.com) teaches a website that supports new artists with artist registration and services.

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"SRSWOWcast.com and LoudENERGY.com form content and marketing alliance" (PR Newswire) discloses promoting and incubating new artists.

"loudEnergy.com takes Bold New Approach" (Business Wire) discloses a website that supports new artists by allowing the artist to receive 100% of the net profit.

"DEMO DERBY: Internet music fans cote on their favorite unsigned artists" (Business Wire) discloses an online music competition that allows users to vote on unsigned artists. Musicians receiving the highest votes continue on to later rounds.

Robischon ("Farm Stand") discloses cultivating new artists via a website and TV show.

Botwin ("Cybertainment; Farmclub pumps up its music offerings") teaches submitting music online by unsigned artists and visitors voting on who should perform on TV.

"Sonic Foundry Sponsors 'Born on the World Wide Web'" (PR Newswire) discloses an online talent search for unsigned artist wherein artists upload their music, a panel of judges chooses their favorite songs, and then posts these songs online for voting by users.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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June 28, 2004


TARIQ R. HARIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600